

# **EXHIBIT B**

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE STEPHEN L. JOHNSON, JUDGE

In Re:	)	Case No. 11-60405-SLJ
	)	Chapter 7
CECELIA A. AUSTIN and	)	
ZIA JAMAL NOORZOY,	)	
	)	
Debtors.	)	
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AISHA A. KRECHUNIAK, et al.,	)	Adv. No. 12-05016
	)	
Plaintiffs,	)	<u>PLAINTIFFS' MOTION for ENTRY</u>
	)	<u>of JUDGMENT [22] and</u>
v.	)	<u>OPPOSITION by DEFENDANTS</u>
	)	<u>[24]</u>
CECELIA A. AUSTIN and	)	
ZIA JAMAL NOORZOY,	)	
	)	
Defendants.	)	Tuesday, June 2, 2015
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	)	San Jose, California

Appearances:

For the Plaintiffs:	William J. Healy, Esq. Campeau, Goodsell & Smith 440 North First Street, Suite 100 San Jose, California 95112 (408) 295-9555
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For the Defendants (via telephone):	Ralph P. Guenther, Esq. Dougherty & Guenther 601 South Main Street Salinas, California 93901 (831) 783-3440
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Digital Court Recorder:	United States Bankruptcy Court Clerk of the Court Kristine Du 280 South First Street, Room 3035 San Jose, California 95113 (408) 278-7570
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1 Tuesday, June 2, 2015

1:38 o'clock p.m.

2 P R O C E E D I N G S

3 THE CLERK: Line item 1, Krechuniak versus Noorzoy, et  
4 al.

5 MR. HEALY: Good afternoon, Your Honor. William Healy  
6 for the plaintiff, moving party - plaintiffs, plural.

7 THE COURT: Okay. Good afternoon. Do you know -

8 MR. GUENTHER: Good af- -

9 THE COURT: Oh, hi.

10 MR. GUENTHER: Good afternoon, Your Honor. Ralph  
11 Guenther appearing on behalf of the debtors Cecelia Austin and  
12 Zia Noorzoy.

13 THE COURT: Okay. So the debtor - sorry - the  
14 plaintiff in the case has moved for entry of a judgment, which I  
15 guess Mr. Guenther's clients oppose.

16 So - so, Mr. Guenther, what's your authority for the  
17 proposition that I should not enter this judgment? I didn't see  
18 any authority in your papers. You just said you don't want it  
19 entered?

20 MR. GUENTHER: Well, it's not that, Your Honor. It's  
21 that the underlying memorandum for settlement doesn't make any  
22 specific reference to any of the subdivisions under 523(a) by  
23 which the plaintiffs may have judgment entered in their favor.  
24 The underlying agreement provided that Mr. Noorzoy would agree  
25 that the underlying obligation was nondischargeable. That was

1 set up in the memorandum for settlement and – but there was no  
2 specific agreement as to any findings under 523(a) by which that  
3 would be nondischargeable.

4 The issue, and I'll cut right to the chase, and Mr.  
5 Healy and I have talked about this as well, is that my client is  
6 a real estate agent. And the concern is is that if there are  
7 any specific findings under 523(a), that his license at that  
8 point would be in jeopardy. And that's the basis for the  
9 objection that was filed with respect to the specific language  
10 found in the judgment. We have no objection to a judgment being  
11 entered that would merely recite that the – that the underlying  
12 obligation is nondischargeable, but the concern has to do with  
13 the specific language that was recited in the proposed judgment  
14 that was submitted by Mr. Healy.

15 THE COURT: Okay. But just going backwards in time a  
16 little bit here, there was a 523 action that was filed by Mr.  
17 Healy's clients against your client – clients, but I guess just  
18 done to one. And so –

19 MR. HEALY: Yes. Ms. – Ms. Austin should be dismissed  
20 and Mr. –

21 THE COURT: Got it. I understood that from your –

22 MR. HEALY: – Guenther and I can deal with that.

23 THE COURT: I understood that from your papers.

24 And I granted relief from stay to allow the state  
25 court to hear and potentially determine that – that cause of

1 action for reasons that were -- that were clear in 2012. And  
2 that all took place, and that -- and what was done, I don't know,  
3 and how it was done, I'm not really sure. But I know that there  
4 was a memorandum for settlement that was prepared and signed by  
5 Aisha Krechuniak and Zia Noorzoy. And so there is a settlement  
6 and the settlement says at paragraph 3, the settlement -- "The  
7 settlement and stipulated judgment shall be nondischargeable in  
8 bankruptcy."

9 So I guess back to you. Why do -- Mr. Guenther, your  
10 client -- correct me if I'm wrong, but -- settled a 523 case.

11 MR. GUENTHER: Correct.

12 THE COURT: And agreed that the debt was  
13 nondischargeable.

14 MR. GUENTHER: Well, and maybe I should interject  
15 something.

16 THE COURT: Well, hold on. Just could you --

17 MR. GUENTHER: Mr. Noorzoy -- please go ahead.

18 THE COURT: Just -- I just need you to answer the  
19 questions. We have a lot more to cover in a few minutes here.  
20 But there was a settlement and the settlement provides -- the  
21 settlement on its face provides that the judgment -- the  
22 settlement and stipulated judgment shall be nondischargeable in  
23 bankruptcy. So how was that not just a settlement that provides  
24 that the debt is nondischargeable?

25 You know there was -- there was a --

1 MR. GUENTHER: We -

2 THE COURT: - 523(a) case filed here. I granted  
3 relief from stay to allow a very similar case to move forward in  
4 state court. The parties agreed to a resolution of that matter,  
5 which in the motion for relief from stay it says that you can go  
6 forward on the breach of fiduciary duty, conversion, fraud, and  
7 intentional infliction of emotional distress. Most of those  
8 would be causes of action under 523(a) in one shape or form or  
9 another. And so that matter was settled and there's a judgment  
10 - or there's an agreement that says it's nondischargeable. So  
11 what are we here to argue about? I'm not really sure.

12 MR. GUENTHER: Your Honor, Ralph Guenther again. And  
13 we are arguing regarding the form of the judgment that has been  
14 submitted by Mr. Healy with specific findings made that my  
15 client did not agree to. He does not object to a judgment being  
16 entered in the bankruptcy court to bring some finality to this  
17 process, but the concern and the objection that we raise has to  
18 do with the specific language that was submitted by Mr. Healy,  
19 or I should say inserted by Mr. Healy into the judgment.

20 THE COURT: Okay.

21 MR. GUENTHER: We have - and I -

22 THE COURT: Okay, I see the -

23 MR. GUENTHER: Please go ahead.

24 THE COURT: I see the distinction that you're drawing.  
25 You don't anything more than it's nondischargeable to be said?

1 That's all that you want to have said?

2 MR. GUENTHER: That's correct, Your Honor.

3 THE COURT: Okay. Now, Mr. Healy, why do I even need  
4 to do this? If there's already a stipulated agreement in the  
5 state court that says it's nondischargeable, and that term means  
6 what it means.

7 MR. HEALY: Currently -

8 THE COURT: Why is this even necessary?

9 MR. HEALY: Currently there's nothing filed in the  
10 state court unless something's happened since we filed the  
11 motion. There's a memorandum of settlement, which is the  
12 exhibit to the motion. But nobody has gone in and got a  
13 judgment entered in the superior court yet.

14 THE COURT: Why is it that you bring it back here?

15 MR. HEALY: Well, the settlement is going to be a  
16 two-part thing. Number one, there is a judgment here saying  
17 that the settlement and the state court judgment are  
18 nondischargeable. Then there's supposed to be a stipulated  
19 judgment held by the plaintiffs until - until there's a default  
20 on the payment schedules, and then they can file the stipulated  
21 judgment. So nobody has filed a motion in the state court for  
22 judgment yet and may not, never - and they may not need to do  
23 that. But no matter what, the settlement and any judgment  
24 entered in superior court needs to be found to be  
25 nondischargeable. And we included the code sections and the

1 subsections because, A, that's what's in the complaint; and it  
2 doesn't make any sense when another judge or another debtor's  
3 counsel comes and deals with this thing in a couple years.

4 THE COURT: Okay. But why – okay. I understand all  
5 of that. I don't understand why you're here. The stipulated  
6 judgment, which is entered, cites that it was a Monterey County  
7 Superior Court case and a JAMS case. And paragraph 3 reads in  
8 its entirety: "A stipulated judgment against Noorzoy in the  
9 amount of \$850,000 shall be executed and held unless and until  
10 there is a default in payment. Should there be a levy or  
11 garnishment by a government agency that prevents the payment of  
12 the ten-percent portion, said levy or garnishment shall not be  
13 considered a default."

14 And then it says, "The settlement and stipulated  
15 judgment shall be nondischargeable in bankruptcy."

16 Why do I need to do anything with this? Why don't I  
17 just say to you: Well, you have what you need. Go to the state  
18 court and get an order or a judgment. Why are you bringing this  
19 back here?

20 I granted relief from stay. And the order says, "Stay  
21 is granted in all respects to the following causes of action so  
22 the parties thereto may proceed to a final judgment against the  
23 debtor." I don't know why – honestly, I don't know why you're  
24 back here.

25 MR. HEALY: Because I can't anticipate and I never



1 would anticipate that a superior court judge would ever feel  
2 comfortable entering such a judgment and would defer back to the  
3 existing bankruptcy case, this particular case. And in six  
4 years from now, if all the you-know-what hit the fan, some new  
5 defense counsel, some new debtor's counsel may argue it's no  
6 authority for the state court to enter the nondischargeable,  
7 it's never been entered here.

8 I mean what - what's kind of screwy by the settlement  
9 is paragraph 6 says the settlement is approved - you know,  
10 subject to the approval of the bankruptcy court. To me, that  
11 entry of judgment is somewhat consistent with that. No  
12 criticism of Mr. Guenther, but the language is not, I'm sure,  
13 what you'd want in a -

14 THE COURT: Well, how do you address Mr. Guenther's  
15 point that none of these provisions that you want in your  
16 judgment are recited anywhere in the settlement agreement? And  
17 the settlement agreement in paragraph 1 kind of goes a long ways  
18 to saying that, you know, Mr. - this is - or, sorry, paragraph  
19 2b. It's - it's intended to be fairly closely held. That's a  
20 fair reading of paragraph 2.

21 MR. HEALY: What do you mean by "closely" - oh, -

22 THE COURT: Well, it just says that -

23 MR. HEALY: - the confidential nature?

24 THE COURT: Yeah, confidential.

25 MR. HEALY: Well, paragraph 9 says it should be

1 confidential, but Mr. Guenther had filed this particular  
2 document in the superior court, is what I was informed, because  
3 otherwise I wouldn't have filed this in -

4 THE COURT: So how - where do you get the idea that we  
5 should make all of these very specific findings when there are  
6 no such findings in the state court that I can rely on for that.

7 MR. HEALY: I think that -

8 THE COURT: Short of him stipulating to them.

9 MR. HEALY: Right. And I think Mr. Guenther's concern  
10 is, is as you look at the proposed stipulated judgment, his  
11 concern is with what language may follow the word - it's words  
12 and it's two different paragraphs - "nondischargeable."

13 THE COURT: In paragraph 2?

14 MR. HEALY: Paragraph 2 and then it's also in - in -

15 THE COURT: 4.

16 MR. HEALY: - paragraph misnumbered 4. I think Mr.  
17 Guenther wants the period to be after the word  
18 "nondischargeable." And our preference obviously is for the  
19 full language. In the grand scheme of things, we can live with  
20 the period being after "523," but my - my underlying concern, as  
21 I said, is what happens in the future. And putting that  
22 settlement language in there, it makes - it makes no sense  
23 unless there's a satisfied 523 -

24 THE COURT: So, Mr. Guenther, would you - would you be  
25 satisfied with a judgment that said - and I'm looking at

1 paragraph 2 of the proposed judgment – reads, "Judgment is  
2 entered in favor of Plaintiffs Aisha Krechuniak, individually  
3 and as trustee for the Krechuniak Aisha A. 2001 Trust, and  
4 against Defendant Zia Jamal Noorzoy, pursuant to the terms of  
5 the memorandum of settlement. And this judgment is  
6 nondischargeable pursuant to Section 523(a)," period.

7 MR. GUENTHER: No, Your Honor. And we have provided  
8 language to Mr. Healy that indicate as to the approved form.  
9 And our position would be that the form of judgment would merely  
10 recite that the underlying obligations between the parties  
11 pursuant to the memorandum of settlement are nondischargeable,  
12 period, end of – end of judgment.

13 MR. GUENTHER: My preference, Your Honor, and I think  
14 you misquoted me, was I could live with: Pursuant to 11 USC  
15 523, period. It's fine strokes, you know.

16 THE COURT: What about that, Mr. Guenther, 523?

17 MR. GUENTHER: I'm sorry, Your Honor. And that our  
18 position would be the same. What we had originally proposed was  
19 simply a recitation that the underlying obligations with the  
20 memorandum of settlement are nondischargeable. And I – frankly,  
21 I believe that the Court's comments are appropriate as well. We  
22 have an agreement that says this is a nondischargeable  
23 obligation, notwithstanding Mr. Healy's concerns to the  
24 contrary. I don't know that there is necessarily anything else  
25 that needs to be done other than possibly a motion to approve

1 the settlement as opposed to a motion for entry of judgment.

2 THE COURT: Let's be clear about another thing. So  
3 your understanding, Mr. Healy, is that because there is a  
4 payment default, what is due is \$850,000, and that's the amount  
5 that's nondischargeable?

6 MR. HEALY: I -- I take no position on that. That to  
7 me is something up to the superior court. If the plaintiffs  
8 take that position, I don't know what the defendants' position  
9 is going to be. But that to me is up to the superior court to  
10 use the mechanisms of that memorandum of settlement to  
11 determine how much is owed and what's not owed, et cetera. I  
12 know there's an issue -- I'm aware that the first payment wasn't  
13 made, but I'm unaware of anybody taking any action in superior  
14 court to deal with that issue. I know they got lots of dynamics  
15 involved in there, but I totally stayed away from that --

16 THE COURT: So that -- you're almost proposing a  
17 judgment to me that is just completely -- I don't even know what  
18 this judgment would say. I mean all it really says is the  
19 motion for entry of judgment is granted. Judgment is entered in  
20 favor of someone, but it has no amount, no number. How is  
21 interest going to run on that?

22 MR. HEALY: Because the actual underlying enforceable  
23 judgment is if -- if a judgment is entered it is going to be  
24 entered in the superior court. The superior court is the -- the  
25 court with the mechanism to determine the amount.

1           THE COURT: Then why don't you just go to the superior  
2 court and get that judgment all in one? Why - why are you  
3 asking me to do it? I mean I gave you relief from stay to go to  
4 final judgment. I think that's what you should do.

5           MR. HEALY: Well, the - here's the concern, as I said  
6 earlier, the concern is that nowhere will it say approved by the  
7 bankruptcy court that it's nondischargeable. And I've never  
8 seen a superior court judge comfortable that they even have that  
9 authority to do so, especially when they're going to be aware  
10 and must be aware in this particular case that there is a  
11 pending bankruptcy. And I also know that six, seven years -

12           THE COURT: Well, usually - I mean but it's usually  
13 the case - I understand what you're saying, but the parties have  
14 agreed that it's nondischargeable. The Court usually doesn't  
15 look much further than that. Even the superior court wouldn't  
16 look much further than that. There's a lot of things that  
17 they're presented with that aren't - you know, that don't  
18 necessarily fit within the square corners of a lawsuit, but the  
19 parties have agreed to it and the Court approves it as a part of  
20 an overall settlement package. Why wouldn't this be just the  
21 same thing?

22           MR. HEALY: There's a case, Your Honor, that I read at  
23 the time I did this motion out of, I think, the Southern  
24 District or the Eastern District. And it was somebody had  
25 settled a lot worse facts than this but a new, presumably,

1 probably a young, aggressive debtor's counsel and defense  
2 counsel came in immediately in a subsequent bankruptcy and  
3 argued that the superior court never made a finding that it was  
4 nondischargeable.

5 THE COURT: I think I know the case you're talking  
6 about. It's distinguishable because the case was -- there was no  
7 earlier bankruptcy case. The subsequent bankruptcy case is the  
8 first bankruptcy case. So it was basically a settlement that  
9 predated the bankruptcy case that said this is nondischargeable  
10 judgment. And -- and then the bankruptcy case is filed. The  
11 plaintiff in the underlying action argues, well, it's  
12 nondischargeable. And the defendant says it's not  
13 nondischargeable, you can't waive a discharge in advance. And I  
14 think that's what the Court found.

15 MR. HEALY: You may be talking about -- there's two  
16 cases. There's one, the published case, and there's one that's  
17 not a published case, and that just went tangential. But the  
18 same -- the same fear -- I have the same response to both cases,  
19 that six years from now, when somebody goes to do a writ or  
20 there's a subsequent bankruptcy, somebody's going to say there's  
21 never been a ruling by that adversary. The adversary just  
22 disappeared.

23 THE COURT: Well, --

24 MR. HEALY: We need some finality here, and that's  
25 always been -- I mean we should have had a stipulated judgment

1 here. And that's what Mr. Guenther and I exchanged recently --

2 THE COURT: So who -- you say -- paragraph 3 says that a  
3 stipulated judgment against Noorzoy in the amount of 850,- shall  
4 be executed. Now where's that?

5 MR. HEALY: Pardon me?

6 THE COURT: Where is the stipulated judgment?

7 MR. HEALY: There was a stipulated judgment that I've  
8 seen prepared by my client's state court counsel, but unsigned  
9 by the opposing side. I assume they received it, but I never --  
10 I've been told it was finalized.

11 THE COURT: I would be comfortable signing a judgment  
12 that said there's a state court action. It was filed, it was  
13 litigated, it was settled on these terms, and there is a  
14 judgment. I would be comfortable signing an order or a judgment  
15 in this case, in an adversary proceeding, saying: That judgment  
16 is nondischargeable. Based on the stipulation of the parties,  
17 that judgment is nondischargeable.

18 MR. HEALY: Well, --

19 THE COURT: But that's not what you're asking me to  
20 do. What you're asking me to do is to sort of dive into the  
21 middle of a transaction and say something's nondischargeable.  
22 I'm -- you have to understand, at some point someone's going to  
23 start executing on this judgment, right? And it has been my  
24 practice for a long time now, when I see something coming from  
25 the state court that's a judgment, I don't repeat its terms, I

1 don't include its terms, I don't use the numbers, because  
2 there's always a fight about what the interest rate is going to  
3 be. Is it going to be the state court rate or is it going to be  
4 the federal rate.

5 MR. HEALY: Right.

6 THE COURT: And you - I think you folks need to sort  
7 out where this judgment is going to be filed. I don't think  
8 it's here. All you have asked me for at the beginning of the  
9 case is a determination that a relationship should end up with  
10 non- - a broken relationship and bad acts should result in a  
11 nondischargeable judgment against a particular person.

12 I granted relief from stay at your request to go down  
13 to state court and get that matter resolved. Apparently you did  
14 resolve it and there's a stipulation. You should go ahead and  
15 get a judgment from the Court on that point, and I think you  
16 need to work on how much that judgment is going to be for and  
17 who - who the parties to it are. And when that's complete, you  
18 can come back here and ask me for a judgment. But I'm not going  
19 to - I'm not - you can't even tell me today what the amount of  
20 this judgment is.

21 MR. HEALY: Because - because to me it's irrelevant.  
22 Whether it's zero or a million or anywhere in between, -

23 THE COURT: It creates a really muddy record, Mr.  
24 Healy. Really, really muddy.

25 MR. HEALY: It - it may - for us it may, but to me



1 it's irrelevant because that's why my client and Mr. Guenther  
2 are working - they have their state court fight. And to me -

3 THE COURT: Well, they've settled their state court  
4 fight.

5 MR. HEALY: Well, they've settled it is correct. And  
6 the settlement requires that some approval from this Court -

7 THE COURT: Well, you'll get your approval when you  
8 have a judgment down there, because I told on the relief from  
9 stay order, go get a final judgment. You don't have a final  
10 judgment.

11 MR. GUENTHER: Your Honor, - Your Honor, and if I may  
12 interject for a moment. Ralph Guenther again.

13 THE COURT: Oh, sure.

14 MR. GUENTHER: The - the memorandum of settlement  
15 provides for a stipulated judgment to be held as in effect  
16 security for the faithful payments made by Mr. Noorzoy  
17 consistent with the settlement agreement. There is - as  
18 proposed, as stated in the agreement, presumably there will  
19 never be occasion for plaintiff to have that stipulated judgment  
20 submitted to the superior court for entry.

21 THE COURT: But you're -

22 MR. GUENTHER: And if the payments are made - at the  
23 conclusion of this, you know, years out, that matter will just  
24 be dismissed and that's that. So Mr. Funk (phonetic) filed a  
25 notice of conditional settlement, which was consistent with this

1 agreement, and what the superior court does now is they simply  
2 hold this in abeyance to make sure that the payments are, in  
3 fact, made. But nothing else will happen in the superior court  
4 unless and until there is a default and a proposed judgment that  
5 would be submitted by Mr. Funk to the superior court.

6 THE COURT: But your client's in default, right?

7 MR. GUENTHER: We - no. We do not - we do not - we're  
8 not saying that we're in default, Your Honor. No.

9 THE COURT: Did you pay a hundred thousand dollars -

10 MR. GUENTHER: And, in fact, we - and, in fact, we  
11 have tendered payment. Our - and this - we can - we can go down  
12 the path, but in answer to the Court's direct question, was the  
13 \$100,000 payment tendered that was referenced here, no, there  
14 was not. But our position is that there was a default by the  
15 plaintiff in this matter where she breached the agreement and  
16 excused our performance. Since then we have been tendering  
17 payment to the plaintiffs' counsel consistent with the terms of  
18 this agreement.

19 THE COURT: So here's my final worked on this, folks.  
20 And, you know, -

21 MR. HEALY: Can I - I think I can resolve all - all of  
22 it easier -

23 THE COURT: I think I can too.

24 MR. HEALY: Mine's better.

25 (Laughter.)

1 THE COURT: Maybe. Well, how -

2 MR. GUENTHER: Yeah.

3 THE COURT: How about I'll give you - I'll let you  
4 have another shot, Mr. Healy, -

5 MR. HEALY: I appreciate it.

6 THE COURT: - is that my take on all of this is that  
7 you're in the middle of a settlement that's breaking apart. And  
8 Mr. Healy has come to me and said, which is a completely  
9 understandable position, 'Could you just enter a judgment for  
10 us.' I'm unwilling to do that for a couple of reasons. One, it  
11 doesn't - it doesn't look entirely consistent with the judgment  
12 - with the agreement that the parties reached.

13 Going back to settle- - paragraph 3, it says, "A  
14 stipulated judgment against Noorzoy in the amount of 850,000  
15 shall be executed and held unless and until there's a default in  
16 payment." Then it goes on to say, "The settlement and  
17 stipulated judgment shall be nondischargeable in bankruptcy."

18 Essentially, I think what you have here is a state  
19 court resolution that involved a matter that would have been  
20 cognizable as a non- - as a nondischargeable debt under 523. A  
21 motion for relief from stay was made, and I allowed you to go to  
22 state court to litigate that. You settled it in state court  
23 with the help of a mediator. And there's a memorandum for  
24 settlement. It looks to me like it's in default, or there is a  
25 very good argument that it's in default. Even if it's not in

1 default, there is a good argument that it is in default. The  
2 truth of it is what you have is a broken settlement and  
3 probably, you know, there are consequences that come from a  
4 broken settlement. But I don't think that asking me to enter a  
5 judgment on something that is obviously mid-stream is the way to  
6 solve the problem. I think that creates further problems. And  
7 my recommendation is, as I indicated in the motion - the order  
8 on the motion for relief from stay, go get a final judgment, and  
9 I'd be happy to deal with a final judgment and determine that it  
10 is nondischargeable, because that's what the parties agreed to.

11 One final point. I think Mr. Guenther is doing back  
12 flips to attempt to have nothing in the record that indicates  
13 that his client acted in an inappropriate way in any way.  
14 Without commenting on his client's actions, because I've never  
15 considered them, I've never met this fellow, and I don't know  
16 what's going on, it's making it really hard to pin down what's  
17 actually supposed to happen here. But the truth of it is it's -  
18 he's - his attempts to prevent anything going into the record  
19 are - are working well enough, because at this point I'm not  
20 willing to enter this judgment on - you know, on these facts.

21 So, Mr. Healy, I interrupted you. What did you want  
22 to say?

23 MR. HEALY: No. I appreciate that. I was going to  
24 just try to cut my proverbial losses and just - because I really  
25 don't want to come back. I want to -

1 THE COURT: I know you don't, but -

2 MR. HEALY: I want to put a closure to the case and -  
3 and I was going to try to cut you off, Your Honor, and just say  
4 we are willing to resubmit this form of judgment with a period  
5 after the word "nondischargeable" in that paragraph 2 and it  
6 would also be at the end of paragraph 4, which is misnumbered.  
7 It should be paragraph 3, because that's important to me, to try  
8 to bring a closure to this. And sometime before the status  
9 conference, I would send Mr. Guenther a dismissal so we have an  
10 actual dismissal as to Ms. Austin, who -

11 THE COURT: Yeah. And, for the reasons I just  
12 indicated, I'm not willing to enter that, because I think - I  
13 really feel like it's - the whole case is kind of a mixed  
14 metaphor. It's really too mixed up at this point for me to do  
15 anything with it. I really think the way to look at it is to go  
16 back to the relief-from-stay order and say, 'Look, we had full  
17 power to do everything that was necessary in state court. Let's  
18 go do that.'

19 And if at the end of the day you want to come back to  
20 me and say, 'Hey, we'd like you to bless this by giving us a  
21 nondischargeable and, look, our agreement even says you're  
22 supposed to approve it,' I think I'd be willing to do that.

23 MR. HEALY: I understand.

24 THE COURT: At this point you're mid-stream on what  
25 looks like a broken settlement to me.

1           MR. HEALY: Your Honor, this one, I don't like quoting  
2 other -- other debtors, but I have a big fear this one's going to  
3 head down the Booker Wade path which, you know, that's a 2009  
4 settlement that's still working its way. And unfortunately it's  
5 the same mediator. I'm hoping that the state court then brings  
6 this to some type of resolution. Then we'll be back here.

7           THE COURT: Okay. So, Mr. Guenther, I hope that helps  
8 you too because I think you need to be -- I think what you're  
9 trying to do is -- is perfectly reasonable in terms of protecting  
10 your client, but the truth is at some point you've got to figure  
11 out a mechanism that the plaintiff has to enforce this debt,  
12 which is all they really want. What they want is an enforceable  
13 debt that survives the bankruptcy case.

14           MR. HEALY: Okay.

15           THE COURT: And I think you --

16           MR. GUENTHER: I understand, Your Honor.

17           THE COURT: -- I think you agree they're entitled to  
18 that, it's just a question of the mechanism.

19           MR. HEALY: Right.

20           MR. GUENTHER: Correct.

21           THE COURT: Okay.

22           MR. HEALY: Before we close, Your Honor, we have a  
23 status conference on the 25th, which given the Court's comments  
24 and just given the lay of the land I don't think there's any  
25 reason to have it on June 25th, but maybe we could try to move

1 that now rather than --

2 THE COURT: Do you want to make it August 25th? It  
3 gives you 60 days to try and pull something together.

4 MR. HEALY: I think that's fine, yeah. I'll --

5 THE COURT: Mr. Guenther, any objection to moving the  
6 status conference, which isn't on today's calendar but is my  
7 status conference, so I suppose I can --

8 MR. GUENTHER: No objection whatsoever, Your Honor.  
9 August 25th is fine.

10 THE COURT: Okay. Tanya, timing?

11 THE CLERK: How about the 27th?

12 THE COURT: Sorry. The 27th.

13 THE CLERK: At 2:30.

14 THE COURT: At 2:30.

15 MR. HEALY: That's fine. We'll file a statement in  
16 advance.

17 MR. GUENTHER: That's fine, Your Honor.

18 THE COURT: All right. Thank you both very much.

19 MR. HEALY: Thank you for your time, Your Honor.

20 THE COURT: Yeah. Good luck.

21 MR. GUENTHER: Thank you, Your Honor.

22 THE COURT: Uh-huh.

23 THE CLERK: Court is adjourned.

24 (The hearing was concluded at 2:05 o'clock p.m.)

25 --o0o--

State of California                    )  
  )     SS.  
County of San Joaquin                )

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify I am not a party to nor in any way interested in the outcome of this matter.

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Dated July 6, 2015